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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/216,206	12/18/1998	HEIDI KAY	EWG-079	1079

28120 7590 02/22/2002

ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

170

**Notification of Non-Compliance with
37 CFR 1.192(c)**

Application No.
09/216,206

Applicant(s)

KAY et al

Examiner

James W. Myhre

Art Unit

2162



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The Appeal Brief filed on Jan 9, 2002 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

The brief improperly includes the restriction of claims 14-18 and 24-28 as an issue of appeal. See attached discussion.

Art Unit: 2162

NOTICE OF DEFECTIVE APPEAL BRIEF

**NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37
CFR 1.192(c)**

1. The brief improperly includes the restriction of claims 14-18 and 24-28 as an issue of appeal and presents arguments in support thereof.

37 CFR 1.143 states "If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving reasons therefore (see § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one of the inventions for prosecution, which invention will be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected."

37 CFR 1.144 further states: "After a final requirement for restriction, the applicant in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181)."

Therefore, the requirement for restriction is a petitionable, not appealable, issue and must be removed from the brief.

Art Unit: 2162

Conclusion

2. Appellant is required to comply with provisions of 37 CFR 1.192(c).

To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192© within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:30 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, can be reached on (703) 305-8469. The fax phone number for Formal of Official faxes to Technology Center 2100 is (703) 746-7239 or 7238. Draft or Informal faxes for this Art Unit can be submitted to (703) 746-7240. Draft faxes may also be submitted directly to the examiner at (703) 746-5544.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-3900.


JWM

February 21, 2002


ERIC W. STAMBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100